

REMARKS

Claims 29-40 are pending in the present application, of which claims 29-40 are currently under examination. Claims 1-28 were previously cancelled. In the foregoing amendments, claims 23, 33 and 37 have been amended. Support for these amendments can be found in the specification and claims of the application as filed. No new matter has been added by these amendments.

Applicants respectfully request entry of the foregoing amendments and reconsideration of the application in light of the amendments above and the remarks below.

Claim Rejections under 35 U.S.C. § 103

Claims 29-40 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kanai (U.S. Patent No. 5,898,682) in view of Choi (U.S. Patent No. 6,278,882). Applicants respectfully traverse this rejection, as hereinafter set forth.

To establish a *prima facie* case of obviousness the prior art reference (or references when combined) **must teach or suggest all the claim limitations**. *In re Royka*, 490 F.2d 981, 985 (CCPA 1974); *see also* MPEP § 2143.03. Additionally, there must be “a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1742, 167 L.Ed.2d 705, 75 USLW 4289, 82 U.S.P.Q.2d 1385 (2007). Finally, to establish a *prima facie* case of obviousness there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Furthermore, the reason that would have prompted the combination and the reasonable expectation of success must be found in the prior art, common knowledge, or the nature of the problem itself, and not based on the Applicant’s disclosure. *DyStar Textilfarben GmbH & Co. Deutschland KG v. C. H. Patrick Co.*, 464 F.3d 1356, 1367 (Fed. Cir. 2006); MPEP § 2144. Underlying the obvious determination is the fact that statutorily prohibited hindsight cannot be used. *KSR*, 127 S.Ct. at 1742; *DyStar*, 464 F.3d at 1367.

The 35 U.S.C. § 103(a) obviousness rejections of claims 29-40 are improper because the elements for a *prima facie* case of obviousness are not met. Specifically, the rejection fails to meet the criterion that the prior art reference must teach or suggest all the claims limitations.

Independent Claims 29, 33, 37

Regarding independent claims 29, 33 and 37, Applicants have amended independent claims 29, 33 and 37 to include claim limitations not taught or suggested in the cited references.

Applicants' amended independent claims 29, 33 and 37, each recite, in part, "increasing *a pilot channel transmit power level of a pilot channel transmitted by the wireless device*" which is not taught or suggested by the cited references.

The Advisory Action recites, in part:

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., reverse link pilot channel) are not recited in the rejected claims(s). (Advisory Action, continuation sheet).

Furthermore, the Final Office Action alleges:

Regarding claim 29. Kanai discloses ... *increasing a pilot channel transmit power level of the wireless device* ... (which reads on **column 2 lines 9-18**). (Final Office Action, p. 3; emphasis added.)

Regarding claim 33. Kanai discloses ... means for *increasing a pilot channel transmit power level of the wireless device* ... (which reads on **column 2 lines 9-18**). (Final Office Action, p. 4; emphasis added.)

Regarding claim 37. Kanai discloses the wireless device is in soft handoff (which reads on column 1, lines 53-55). (Final Office Action, p. 5).

Applicants respectfully assert that neither Kanai nor Choi, either individually or in any proper combination, teaches or suggests Applicants' invention as presently claimed in amended independent claims 29, 33 and 37, which each recite, in part, "increasing *a pilot channel transmit power level of a pilot channel transmitted by the wireless device*." As is known in a wireless (e.g., cellular-like) system, a base station communicates with a wireless device (e.g., mobile station). Communication links *from* the base station *to* the wireless device occur over channels on a "*forward* link." Communication links *from* the wireless device (e.g., mobile station) *to* the base station occur over channels on a "*reverse* link."

As claimed, Applicants invention recites, in part, "increasing *a pilot channel transmit power level of a pilot channel transmitted by the wireless device*." However, both Kanai and Choi only teach or suggest a pilot channel *of the base station*. Specifically at the Final Office Action's citation to Kanai at column 2, lines 9-18, Kanai teaches:

According to an aspect of this invention, the radio channel control apparatus comprising a quality monitoring means for monitoring the communication quality of at least one of the code-division multiplexed radio channels to produce a quality monitoring signal representative of the communication quality, and power level control means for controlling a power level of the pilot signal in response to the quality monitoring signal *to change the cell in size from one to another in dependency upon the power level of the pilot signal.* (Emphasis added.)

Kanai consistently teaches, “the *pilot signal* supplied *from* a communicating *base station to the mobile station.*” (Kanai, col. 8, lines 13-14; emphasis added). However, Kanai lacks any teaching or suggestion regarding any reverse link “pilot channel” from a mobile station to a base station and, therefore, cannot teach or suggest “increasing a *pilot channel transmit power level of a pilot channel transmitted by the wireless device,*” as claimed by Applicants.

Similarly, Choi is entirely silent regarding any teaching of a reverse link “pilot channel.” Choi teaches a forward link “pilot channel” but fails to teach or suggest any reverse link “pilot channel.” Choi specifically teaches, “The sector *forward* power is the sum of the overhead *channel (pilot, paging, and synch channel)* power and” (Choi, col. 4, lines 50-51; emphasis added.)

Because neither Kanai nor Choi teach or suggest “increasing a *pilot channel transmit power level of a pilot channel transmitted by the wireless device*” as claimed by Applicants, these references, either individually or in any proper combination, cannot render obvious, under 35 U.S.C. §103, Applicants’ invention as presently claimed in amended independent claims 29, 33 and 37. Accordingly, Applicants respectfully request that the rejection of independent claims 29, 33 and 37 be withdrawn.

Dependent Claims 30-32, 34-36, 38-40

The nonobviousness of independent claim 29 precludes a rejection of claims 30-32 which depend therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. See *In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), see also MPEP § 2143.03. Therefore, Applicants request that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to independent claim 29 and claims 30-32 which depend therefrom.

The nonobviousness of independent claim 33 precludes a rejection of claims 34-36 which depend therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, Applicants request that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to independent claim 33 and claims 34-36 which depend therefrom.

The nonobviousness of independent claim 37 precludes a rejection of claims 38-40 which depend therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, Applicants request that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to independent claim 37 and claims 38-40 which depend therefrom.

CONCLUSION

In view of the foregoing, Applicants submit that all pending claims in the application are patentable. Accordingly, reconsideration and allowance of this application are earnestly solicited. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Respectfully submitted,

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